IN THE SUPREME COURT OF THE STATE OF NEVADA

EDGEWORTH FAMILY TRUST; and AMERICAN GRATING, LLC, Appellants/Cross-Respondents, vs. DANIEL S. SIMON; and THE LAW OFFICE OF DANIEL S. SIMON, a Professional Corporation, Respondents/Cross-Appellants.	**Supreme Court No. 77678** District Court Case No.: A-16-738444-C *Consolidated with:* A-18-767242-C
EDGEWORTH FAMILY TRUST; AMERICAN GRATING, LLC, Appellants, vs. DANIEL S. SIMON; and THE LAW OFFICE OF DANIEL S. SIMON, a Professional Corporation, Respondents.	Consolidated with: **Supreme Court No. 78176**

ANSWER TO APPELLANTS' PETITION FOR REHEARING

JAMES R. CHRISTENSEN, ESQ.
Nevada Bar No. 003861
601 S. 6th Street
Las Vegas, NV 89101
(702) 272-0406
jim@jchristensenlaw.com
Attorney for Daniel S. Simon and The Law Office of Daniel S. Simon

I. Standard of review for a petition for rehearing.

It is improper to raise new issues in a petition for rehearing. Any matter raised in a petition must be one that was previously relied upon.

> Upon review of respondent Herrmann's petition for rehearing, we find that the same does not direct our attention to any germane legal or factual matter, previously relied upon by respondent Herrmann's counsel, which was overlooked in our initial opinion. Said petition for rehearing therefore was not properly filed.

Matter of Estate of Herrmann, 100 Nev. 149, 151, 679 P.2d 246, 247, (1984); NRAP 40(c)[1].

It is improper to reargue decided matters in a petition for rehearing. *Herrmann*, 679 P.2d at 247, 100 Nev. at 151; NRAP 40(c).

Matters raised in a petition for rehearing must be material. NRAP 40(c); *Whitehead v. Nevada Com'n. on Judicial Discipline*, 110 Nev. 380, 386, 873 P.2d 946, 950-51 (1994). If matters raised in a petition are not

[1] NRAP 40(c) Scope of Application; When Rehearing Considered.
(1) Matters presented in the briefs and oral arguments may not be reargued in the petition for rehearing, and no point may be raised for the first time on rehearing.
(2) The court may consider rehearings in the following circumstances:
(A) When the court has overlooked or misapprehended a material fact in the record or a material question of law in the case, or
(B) When the court has overlooked, misapplied or failed to consider a statute, procedural rule, regulation or decision directly controlling a dispositive issue in the case.

material, then the petition was improperly filed. *Id.*, at 389-90, 873 P.2d at 952-53.

An improperly filed petition may result in sanctions. *Herrmann*, 100 Nev. at 151-52, 679 P.2d at 247-48.

II. Statement of relevant facts.

Daniel Simon helped his longstanding family friends with their property loss as a favor, with no discussion of a fee. IX-AA02175:9-14. Simon hoped a few letters would resolve the matter. IX-AA02175:23-26. When the letters did not work, Simon filed a lawsuit for his friends. IX-AA02175:23-26.

Simon worked without an express fee agreement and advanced costs for his friends. (*See, e.g.*, IX-AA02180:15-16; IX-AA02190:7-13) Simon put a tremendous amount of work into his friends' complex product liability case. IX-AA02175:15; IX-AA02177:19-21.

Simon was aggressive in representing his friends. IX-AA02192:10. Will Kemp testified that Simon's work was exceptional. IX-AA02192:3-8.

Simon obtained a phenomenal result for his friends. IX-AA02192:19-AA012193:1; IXAA02194:9-11. Simon's exceptional work led to a Six-Million-Dollar recovery on a $500,000.00 property damage loss. IX-AA02192:19-21; IX-AA02194:9-11. His friends agree that they were made

more than whole because of Simon's exceptional work and the amazing result. IX-AA02192:27- AA02193:1.

Simon understood his friends would pay the reasonable value of his services at the end of the case, while also understanding that the case's finances were challenging. IX-AA02179:4-6; V-AA01039:14-20.

In August of 2017, before any offers were made, Simon discussed an express fee agreement with his friend Brian Edgeworth. IX-AA02176:5-20; V-AA00975:17-AA00976:20. The discussion did not go far because Edgeworth *wanted to be paid money by Simon* as a condition to an express fee agreement. V-AA01234:17-AA01235:20; VII-AA01532:1-AA01533:12. Shortly after, Edgeworth sent an email in which he confirmed there was no express fee agreement. IX-AA02176:15-20; IX-AA02180:15-AA02181:12.

On November 17, 2017, Simon held a meeting to discuss the case and an express fee agreement with his friends. IX-AA02178:4-5; VI-AA01476:17-AA01477:8. At and following the meeting, the Edgeworths acted coy about an express agreement. VI-AA01493:14-AA01494:7. The Edgeworths then became hard to reach. VI-AA01497:13-19. Eventually, Brian Edgeworth asked Simon to send a proposed fee agreement. VI-AA01493:14-AA01494:7.

On November 27, 2017, Simon sent a proposed fee agreement in response to Brian Edgeworths' request. VI-AA01493:14-AA01494:7; I-AA00051.

On November 30, the Edgeworths discharged Simon. IX-AA02181:24-AA02186:8.

On December 1, Simon lawfully asserted an attorney lien for reasonable fees and advanced costs. I-AA00062-AA00070; IX-AA02180:1-7.

On December 26, the Edgeworths accused Simon of an intent to steal the settlement (which their lawyer said he did not believe but he made the accusation anyway). I-AA00099-100.

On January 2, 2018, Simon amended the lien. I-AA00104-AA00110. The petition states without support that "Simon, though the use of two attorney liens, *wrongfully laid claim* to over $1,997,843 of the Edgeworths' personal property". (Italics added.) (Petition at page 4.) The petition cites to the liens. There is no citation to a finding or evidence that the liens were *wrongfully* asserted. Nor could there be as this Court stated in its order that, "the district court's finding that Simon properly perfected the attorney lien became the law of the case". *Edgeworth Family Trust v. Simon*, 477

P.3d 1129 (Table) 2020 WL 7828800 (unpublished)(Nev. 2020); IX-AA02180:1-7.

Simon used the market approach to determine his reasonable fee. There is nothing new about the market approach. *See, e.g*., *Blum v. Stenson*, 465 U.S. 886, 895, 104 S.Ct. 1541, 1547 (1984) (market rate examined for a fee application under 42 USC 1988); and Restatement Third, The Law Governing Lawyers, §39. The use of the market approach and the reasonable fee claimed were supported by the unrebutted testimony of Will Kemp, who the district court recognized as an expert. IV-AA01677:10-AA01679:23. It is improper for the Edgeworths to petition for rehearing based on a false factual claim.

On January 4, the Edgeworths filed a conversion complaint against Simon. I-AA00111-AA00120.

On January 8, the settlement checks were deposited into the agreed upon joint trust account. I-AA00121.

On January 9, the Edgeworths served the complaint. I-AA00122.

On March 15, the Edgeworths amended their complaint. III-AA00688-AA00699.

Angela Edgeworth testified that the complaints were filed to “punish” Simon. VIII-AA01873:17-21.

The Edgeworths' complaints are factually pled. The complaints specifically allege that: (1) An express fee agreement was formed with Simon at the outset of the case-May of 2016; (2) That Simon was paid in full under the express fee agreement; (3) That because of being paid in full under the express fee agreement, Simon's use of an attorney lien breached the express fee agreement and was a conversion. I-AA00111- AA00120; III-AA00688-AA00699. The complaints are not pled in the alternative and do not allege formation or breach of an implied contract. I-AA00111-AA00120; III-AA00688-AA00699.

The Edgeworths' opening brief reaffirms that they sued Simon for conversion because they were due the entire settlement. (Opening brief at 11). Thus, the Edgeworths asserted that they had exclusive rights to the entire settlement.

Of course, no money was converted or stolen. Every penny is accounted for. Four million dollars in undisputed funds were promptly paid to the Edgeworths, and the funds in dispute remain safekept in a joint interest-bearing trust account. The joint account was opened in agreement with the Edgeworths' counsel, and at his request. I-AA00121. ("This account was set up at the request of Mr. Vannah." IX-AA02203:10-14.) Under the agreement, all interest on the account goes to the Edgeworths,

even interest earned on money that is due Simon under the lien. I-AA00099.

As the fee dispute moved forward, the Edgeworths undercut their own complaints when they (and their counsel) told the district court that they always knew Simon was owed fees and costs out of the settlement. V-AA01057:20-25; V-AA01120:1-AA01121:3. Thus, the Edgeworths concede that they always knew they did not have an exclusive claim to the entire settlement and that they always knew that their complaints were "not well grounded in fact". NRS 7.085(1)(a).

After holding a lengthy hearing and taking substantial evidence, the district court made findings in line with the Edgeworths concession that their complaints were "not well grounded in fact", the district court found no basis or evidence for conversion, dismissed the operative complaint, and leveled sanctions. IX-AA02197-AA02206.

III. Summary of arguments.

The petition was improperly filed. The petition is based upon a false factual claim that Simon wrongfully used an attorney lien, when the district court found the lien to be lawful and this Court affirmed and observed the finding was the law of the case.

This Court did not overlook the existence of the implied contract when it affirmed the district court, the implied contract was addressed in footnote 5 of the order. The Edgeworths did not raise the issue in their earlier briefing, and the petition does not provide the required citation. Further, the petition does not use the correct standard of review, and the matter raised is not material.

This Court properly affirmed the district court finding of constructive discharge. The petition reargues a matter and again uses the wrong standard of review. Under the correct standard this Court properly affirmed because the district court finding was supported by substantial evidence. The factual inference promoted by the petition does not alter the basis of the district court finding and is not material.

This Court did not retroactively apply law by citing a 2008 case. The dismissal of the conversion cause of action by the district court, and the affirmance by this Court, were well grounded in long standing principles of conversion law. A party cannot sue in conversion for an alleged taking by lawful process of an inchoate sum of money.

This Court properly affirmed the sanction imposed by the district court. Not only did the conversion complaint fly in the face of long settled law, but the Edgeworths conceded that they always knew that they did not

have a right to the entire settlement. The complaint was not well grounded in fact or warranted under the law.

IV. This Court did not overlook the implied contract.

The petition argues this Court overlooked a breach of the implied in fact contract found by the district court. The petition points to the November 27 letter sent by Simon in response to Brian Edgeworths' request for a proposed written fee agreement as evidence of breach.

The petition is improper for several separate reasons. The petition does not comply with NRAP 40(a)(2)[2]or (c). The Edgeworths did not previously rely upon the argument that an implied contract existed or was breached. Further, the complaints do not state a cause of action based on an alleged implied contract, the new argument is outside of the pleadings.

The petition is improper because the Edgeworths did not apply the correct standard of review.

[2] NRAP 40(a)(2) *Contents.* … Any claim that the court has overlooked or misapprehended a material fact shall be supported by a reference to the page of the transcript, appendix or record where the matter is to be found; any claim that the court has overlooked or misapprehended a material question of law or has overlooked, misapplied or failed to consider controlling authority shall be supported by a reference to the page of the brief where petitioner has raised the issue.

The petition is also improper because it does not raise a material matter. At most the November letter is but one contested fact among many and is unconvincing in the face of the district court's finding that Simon did not commit a material breach of his duties but rather fulfilled his duties to an exceptional degree.

A. The letter breach argument is new.

The petition contends that this Court overlooked that the November 27 letter breached the implied contract found by the district court. The contention is not correct. This Court addressed the issue in its order:

> The Edgeworths do not argue that the district court's finding of an implied contract could have formed the basis of their breach of contract and good faith and fair dealing claims.

Edgeworth Family Trust, 477 P.3d 1129, 2020 WL 7828800, at fn 5. The petition confirms this is a new argument by the failure to comply with NRAP 40(a)(2). There is no citation to the briefing where the argument was previously made.

In the briefing, the Edgeworths challenged the use of "external evidence" by the district court to dismiss the amended complaint. (Opening Brief at 21-23.) This Court disagreed with the argument and affirmed the district court's application of its findings as the law of the case.

Lastly, the Edgeworths did not allege breach of an implied contract in their complaints. Their complaints are factually pled and rely solely on the allegation of an express contract formed at the outset of the case. I-AA00111- AA00120; III-AA00688-AA00699. It is improper to raise a new matter in a petition that is not contained in the pleadings. NRAP 40(c); *Herrmann*, 100 Nev. at 151, 679 P.2d at 247.

B. The petition does not use the correct standard of review.

The district court dismissed the amended complaint based on findings of fact. Under the abuse of discretion standard, findings may not be set aside if the findings are based on substantial evidence. *NOLM, LLC v. County of Clark*, 120 Nev. 736, 739, 100 P.3d 658, 660-61 (2004).

The petition commits the classic blunder of arguing only factual inferences which favor the Edgeworths while ignoring the basis of the district court's findings. *See*, *Ainsworth v. Combined Ins. Co. of America*, 105 Nev. 237, 246-247, 774 P.2d 1003, 1010-1011 (1989) (*Ainsworth* examined the evidence supporting a jury verdict). By ignoring the substantial evidence upon which the district court based its findings, the petition does not use the proper standard of review, and thus does not present this Court with proper grounds to rehear its order.

C. The new argument is not material.

The new letter argument is not material and cannot change the outcome. The November letter was sent when Simon was again attempting to reach an express fee contract. IX-AA02178; VI-AA01476-AA01477; VI-AA01493-AA01494. The proposed fee agreement was sent at the request of the Edgeworths. VI-AA01493:14-AA01494:7; I-AA00051. Negotiation of the terms of a proposed express contract does not breach a material term of an implied in fact contract. *Bernard v. Rockhill Dev. Co.*, 103 Nev. 132, 135, 734 P.2d 1238, 1240 (1987). The case cited in the petition does not hold that negotiation towards an express contract is a per se breach of an implied in fact contract. *Pruchnicki v. Envision Health Care*, 439 F.Supp.3d 1226 (D. Nev. 2020) (*Pruchnicki* addressed data breach remedies).

The new letter argument also fails because of the weight of the evidence. After this Court's order, the Edgeworths found a few lines in an exhibit to present out of context. However, the lines do not constitute a material breach. "A breach of contract may be said to be a material failure of performance of a duty arising under or imposed by agreement." *Bernard*, 103 Nev. at 135, 734 P.2d at 1240; *quoting, Malone v. University of Kansas Med. Cent.*, 220 Kan 371, 552, 885, 888 (1976). Apposite, the district court found that Simon was due recognition for his

effective representation which continued even after his discharge. IX-AA02192:19-25. There is no evidence of a material failure of performance by Simon, ever. The district court found the exact opposite and the finding was based on substantial evidence.

V. The constructive discharge finding was properly affirmed.

The petition reargues that the November letter demonstrates that this Court erred when affirming the district court's constructive discharge finding. While the Edgeworths did not argue that the November letter breached the implied contract on appeal, they did argue the November letter in the discharge context. (For example, Opening Brief at 9.)

The petition's attack on this Court's affirmation of the district court's constructive discharge finding is improper for three reasons. First, the petition does not use the correct standard of review. Second, the petition repeats a previously argued and decided matter. Third, the November letter is not material to the constructive discharge finding.

A. The standard of review.

This Court's order stated the standard of review:

> We review a "district court's findings of fact for an abuse of discretion" and "will not set aside those findings unless they are clearly erroneous or not supported by substantial evidence."

Edgeworth Family Trust, 477 P.3d 1129, 2020 WL 7828800.

In contrast, the petition argues that because the November letter is evidence of a discharge by Simon, that this Court erred in affirming the district court finding of constructive discharge by the Edgeworths. (Petition at 10-11.)

The petition uses an improper standard of review. When reviewing findings, this Court looks at the evidence that supports the district court's finding. If the district court's finding is supported by substantial evidence, as it was here, then the district court must be affirmed. *Ainsworth*, 105 Nev. at 246-247, 774 P.2d at 1010-1011.

B. A petition for rehearing is not an opportunity to reargue.

The argument that the November letter establishes that this Court erred in affirming the district court's constructive discharge finding is improper. A petition may not be used to reargue a matter already considered and decided by the Court. NRAP 40(c).

The Edgeworths already argued that the letter of November 27 demonstrated that the district court erred in reaching the constructive discharge finding. (For example, Opening Brief at 9.) This Court disagreed. This Court affirmed the district court finding of constructive discharge because the finding was based on substantial evidence.

C. The November letter is not material.

A matter raised in a petition for rehearing must be material. The petition is improper because the November letter is not material to the constructive discharge finding.

The November letter was sent at the request of the Edgeworths within the context of an effort to reach an express fee agreement. The letter was one piece of evidence out of many considered by the district court, and any interpretation or inference of or from the letter would be subject to the district court's view of the credibility of the witnesses. The district court considered and cited the November letter in its findings, just not in the manner favored by the Edgeworths. IX-AA02184. This Court found that the finding of constructive discharge was supported by substantial evidence noting that the Edgeworths ended communication with Simon, ignored Simon's advice and hired replacement counsel.

At best, the petition reargues a contrary fact. The existence of a contrary fact is not material to this Court's review and affirmation that the district court's finding was supported by substantial evidence.

VI. This Court did not apply new law by citing a 2008 case.

This Court did not retroactively apply new law in its order. The holding in *M.C. Multi Family Development LLC, v. Crestdale, Assoc., Ltd*., 124 Nev. 901, 193 P.3d 536 (2008) did not create new law, nor overturn precedent. *M.C. Multi Family Development* speaks to the need for a Plaintiff to demonstrate ownership of the personal property in a conversion case. A party cannot sue for conversion of a cow the party does not own. The holding "only applied settled principles of conversion law." *Kremen v. Cohen*, 337 F.3d 1024, 1035 (9th Cir 2003). Further, even if *M.C. Multi Family Development* created new law, the opinion was published in 2008, thus there was no retroactive application of law, and the Edgeworths had plenty of notice of the change.

Simon cited *M.C. Multi Family Development* every time Simon moved to dismiss the conversion claim, and on appeal. This is the first time the Edgeworths have challenged the need to establish ownership in a conversion case.

Lastly, even if the argument advanced in the petition is accepted, it would not change the outcome. The conversion claim failed in many other ways.

A. This Court did not retroactively apply new law.

M.C. Multi Family Development did not overturn precedent or create new law when it addressed intangible property. The line between tangible and intangible property in a conversion case was blurred a long time ago. *See, e.g., Payne v. Elliot*, 54 Cal. 339, 1880 WL 1907 (1880) (recognizing conversion for "every species of personal property"). The holding in *M.C. Multi Family Development* applied that long held principle.

M.C. Multi Family Development did not overturn precedent or create new law when it used the term exclusive possession. Exclusive possession is not new, it is nothing more than the long-held requirement that a claimant must establish ownership of the personal property over which another has exerted wrongful dominion. You cannot sue for conversion of a cow unless it is your cow.

In *Wantz v. L.V. Redfield*, 74 Nev. 196, 326 P.2d 413 (1958), the dismissal of a conversion claim was upheld because the ownership of the allegedly converted personal property was in dispute and the subject of

judicial resolution. Wantz lost, because Wantz could not establish exclusive possession or undisputed ownership of the personal property.

Ownership was undisputed in *Bader v. Cerri,* 96 Nev. 352, 609 P.2d 314 (1980). Cerri prevailed on a conversion claim because it was undisputed that Cerri owned the cattle. Bader lost because Bader put his brand on cattle that exclusively belonged to Cerri.

In, *In re Emery*, 317 F.3d 1064 (9th Cir. 2003), the California elements of conversion were applied, which are like Nevada. The case held in favor of the dismissal of a conversion claim against a law firm over settlement proceeds, in part, because the claimant could not establish exclusive ownership of the money. The same is true here. Just like in *Wantz*, and *In re Emery*, and unlike the facts in *Bader*, the Edgeworths do not have an exclusive ownership right to the funds in dispute under the lawful lien.

In addition, the Edgeworths conversion claim fails under long held law because they admit they are suing over an inchoate amount. The Edgeworths complaints assert an exclusive right to all the settlement money. I-AA00111-AA00120; III-AA00688-AA00699. However, the Edgeworths conceded they always knew they owed Simon fees and advanced costs. V-AA01057:20-25; V-AA01120:1-AA01121:3.

In *Larson v. B.R. Enterprises*, 104 Nev. 252, 757 P.2d 354 (1988), the district court was able to find conversion because there was an identified sum of money. The Edgeworths' allegation they were due the entire settlement was false as they conceded they always knew they owed Simon money for fees and advanced costs. As a result, they did not and could not identify a sum certain. *See, e.g., PCO, Inc., v. Christensen, Miller, Fink, Jacobs, Glaser, Weil & Shapiro, LLP*, 150 Cal.App.4th 384, 395-397 (2007)(PCO discussed the need to identify a sum certain.)

Under long standing law, a party cannot bring a conversion claim for an inchoate sum of money. As the new argument goes, the petition contends a party should be allowed to sue for conversion on an amount of money *to be determined* by the district court. The new argument flies in the face of long-standing principles of law and is absurd.

B. This is a new argument.

Simon argued throughout this case that the Edgeworths could not establish ownership or a right of exclusive possession to the disputed funds subject to the lawful attorney lien. Yet, this is the first time *M.C. Multi Family Development* has been labeled as a niche case, ownership as an element has been challenged, or it was argued that conversion can be found on an

undetermined sum of money. It is improper to raise new arguments on rehearing.

C. The new argument is not material.

The conversion claim was dismissed for many reasons. First, whatever terminology is used, a party cannot sue for conversion of property the party does not own, or of property whose ownership is lawfully in dispute. *Wantz,* 74 Nev. 196, 326 P.2d 413.

Second, this Court's order did not apply new law in holding, "Once Simon filed the attorney lien, the Edgeworths were not in exclusive possession of the disputed fees, see NRS 18.015(1), and, accordingly, it was legally impossible for Simon to commit conversion." *Edgeworth Family Trust,* 477 P.3d 1129. Ownership is a necessary element of conversion. *See, e.g*., William L. Prosser, *Nature of Conversion*, 42 Cornell L. Rev. 168 (1957).

Third, the complaints falsely alleged that the Edgeworths were due the entire settlement. V-AA01057:20-25; V-AA01120:1-AA01121:3; DO 12b5 7:6-19. The conversion claim was properly dismissed because it was not well grounded in fact.

Fourth, the complaints and the petition falsely allege that the Simon attorney lien *wrongfully* exerted dominion over the settlement money. The

district court found, and this Court affirmed as the law of the case, that the attorney lien was lawful and proper. IX-AA02179:18-AA02180:12; *Edgeworth Family Trust,* 477 P.3d 1129, 2020 WL 7828800, ("the district court's finding that Simon properly perfected the attorney lien became the law of the case and thus bound the district court during its adjudication of the NRCP 12(b)(5) motion."). Simon cannot be sued for a lawful act. *Wantz,* 74 Nev. 196, 326 P.2d 413. The Edgeworths cannot establish the wrongful element.

Fifth, the district court finding that the disputed funds were properly handled by Simon under the law went unchallenged by the Edgeworths. IX-AA02203:10-14. The finding was based on substantial evidence that the disputed money was safekept in a joint trust account that was set up *in an agreement with and at the request of Mr. Vannah* and on the undisputed expert testimony of former Bar Counsel. I-AA00126-AA00136. Again, the wrongful element cannot be established.

Sixth, the district court finding that the Edgeworths sued for conversion even before there were any funds to convert was not challenged. IX-AA02203:15-19. The district court thus ruled based on substantial evidence that the complaint had no merit when filed.

The new exclusive possession matter raised by the petition is not material. The dismissal was properly affirmed.

VII. Sanctions were warranted.

The district court did not abuse its discretion when it found the conversion claim against Simon was not warranted by existing law and was not well-grounded in fact.

Fundamental fairness does not act to shield the Edgeworths. The couple falsely alleged ownership over the settlement when they admit they always knew that they owed money to Simon under the lawful lien. It was not fundamentally fair to "punish" Simon because he used a lawful lien to resolve their fee dispute, and is unwarranted under *Wantz*, and other law. Suing for conversion when the disputed funds are safekept in a joint trust account under the Edgeworths' terms is inexcusable. Alleging conversion of a sum of money to be named later is absurd.

The lien statute provided a fast and fair remedy for this fee dispute. The Edgeworths' complaint for conversion was uncalled for, was "not well grounded in fact" and was not "warranted by existing law" or by a good faith argument to change existing law. NRS 7.085. The district court did not abuse its discretion in sanctioning the Edgeworths.

VIII. Request for sanctions.

NRAP 40(g) states:

> **(g) Sanctions.** Petitions for rehearing which do not comply with this Rule may result in the imposition of appropriate sanctions.

The petition did not comply with NRAP 40. The petition raised new matters in violation of NRAP 40(c)(1). The petition did not comply with NRAP 40(a)(2) when the petition did not provide the required citations.

The petition reargued a matter already presented in the briefs in violation of NRAP 40(c)(1).

The petition asserted the false claim that Simon *wrongfully* used an attorney lien when the law of the case is the exact opposite. The false claim was material to the petition, was not supported by a legitimate citation to the record on appeal and was contrary to the plain language of this Court's order.

The petition also endorses an absurd interpretation of conversion law by arguing that a person can sue another for conversion of an amount of money to be determined later, when the other person acted pursuant to law to resolve a dispute.

Finally, the Edgeworths did not use the correct standard of review in their petition even after this Court stated the correct standard in its order.

This is not a simple oversight but was done to persuade this Court to change its ruling.

Simon respectfully requests sanctions be imposed and that Simon be granted leave to submit an application for fees which complies with *Brunzell*.

IX. Conclusion.

The petition is improper and vexatious. The petition is based upon a false factual assertion, introduces new matters, and reargues decided matters. The petition also advances an absurd view of conversion that is directly contrary to long-held principles of conversion law. Sanctions are warranted.

Dated this 22nd day of February 2021.

/s/ James R. Christensen

JAMES R. CHRISTENSEN, ESQ.
Nevada Bar No. 003861
James R. Christensen, PC
601 S. 6th Street
Las Vegas, NV 89101
Attorney for Simon

VERIFICATION

STATE OF NEVADA)
) :ss
COUNTY OF CLARK)

I, James R. Christensen, am an attorney for Daniel S. Simon and The Law Office of Daniel S. Simon, a Professional Corporation. I hereby certify that I have read the foregoing Answer to Petition for Rehearing, have personal knowledge concerning the matters raised therein, and to the best of my knowledge, information, and belief, the factual matters set forth are as documented in the records of the case and Appendix, and that the arguments herein are not frivolous nor interposed for any improper purpose or delay.

I declare under the penalty of perjury of the laws of Nevada that the foregoing is true and correct.

/s/ James R. Christensen
JAMES R. CHRISTENSEN, ESQ.
Nevada Bar No. 003861
601 S. 6th Street
Las Vegas, NV 89101
Attorney for Simon

CERTIFICATE OF COMPLIANCE

I hereby certify that this Answer to Petition for Rehearing complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft word for office 365 MSO in 14 point Arial font. I further certify that this brief complies with the page or type volume limitation of NRAP 40(b)(3) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C) it does not exceed 4,667 words.

I hereby certify that I have read this, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this Answer to Petition for Rehearing complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record be supported by a reference to the page of the transcript or appendix where the matter relied on is to be found.

I understand that I may be subject to sanctions in the event that it is not in conformity with the Nevada Rules of Appellate Procedures.

DATED this 22nd day of February, 2021.

/s/ James R. Christensen
JAMES R. CHRISTENSEN, ESQ.
Nevada Bar No. 003861
601 S. 6th Street
Las Vegas, NV 89101
Attorney for Simon

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 22nd day of February, 2021, I served a copy of the foregoing Answer to Petition for Rehearing on the following parties by electronic service pursuant to Nevada Rules of Appellate Procedure:

Robert D. Vannah, Esq.
John B. Greene, Esq.
VANNAH & VANNAH
400 S. Seventh Street, 4th Floor
Las Vegas, NV 89101
Attorneys for Edgeworth Family Trust and
American Grating, LLC

/s/ Dawn Christensen
an employee of
JAMES R. CHRISTENSEN, ESQ.